

2005

STATE OF NEBRASKA

**STATUTES RELATING TO
OCCUPATIONAL THERAPY**

NEBRASKA HEALTH AND HUMAN SERVICES SYSTEM



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OCCUPATIONAL THERAPY

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STATUTES PERTAINING TO OCCUPATIONAL THERAPY

71-6101. Act, how cited. Sections 71-6101 to 71-6123 shall be known and may be cited as the Occupational Therapy Practice Act.

Source: Laws 1984, LB 761, § 29; Laws 2003, LB 242, § 138; Laws 2004, LB 1005, § 120. Operative date July 16, 2004.

71-6102. Purpose of act. In order to (1) safeguard the public health, safety, and welfare, (2) protect the public from being misled by incompetent, unscrupulous, and unauthorized persons, (3) assure the highest degree of professional conduct on the part of occupational therapists and occupational therapy assistants, and (4) assure the availability of occupational therapy services of high quality to persons in need of such services, it is the purpose of the Occupational Therapy Practice Act to provide for the regulation of occupational therapists.

Source: Laws 1984, LB 761, §30. Effective date July 10, 1984.

71-6103. Terms, defined. For purposes of the Occupational Therapy Practice Act, unless the context otherwise requires:

(1) Active license means the license of a person who is acting, practicing, functioning, and working in compliance with the requirements of a license;

(2) Association means a recognized national or state association for occupational therapy;

(3) Board means the Board of Occupational Therapy Practice established by section 71-6115;

(4) Credentialing means the process of obtaining state approval to provide health care services or human services or to change aspects of a current approval and includes, but is not limited to, granting permission to use a protected title that signifies that a person is qualified to provide the services within the scope of practice of a profession;

(5) Deep thermal agent modalities means therapeutic ultrasound and phonophoresis. Deep thermal agent modalities does not include the use of diathermy or lasers;

(6) Department means the Department of Health and Human Services Regulation and Licensure;

(7) Electrotherapeutic agent modalities means neuromuscular electrical stimulation, transcutaneous electrical nerve stimulation, and iontophoresis. Electrotherapeutic agent modalities does not include the use of ultraviolet light;

(8) Mechanical devices means intermittent compression devices. Mechanical devices does not include devices to perform spinal traction;

(9) Occupational therapist means a person holding an active license to practice occupational therapy;

(10)(a) Occupational therapy means the use of purposeful activity with individuals who are limited by physical injury or illness, psychosocial dysfunction, developmental or learning disabilities, or the aging process in order to maximize independent function, prevent further disability, and achieve and maintain health and productivity.

(b) Occupational therapy encompasses evaluation, treatment, and consultation and may include (i) remediation or restoration of performance abilities that are limited due to impairment in biological, physiological, psychological, or neurological processes, (ii) adaptation of task, process, or the environment, or the teaching of compensatory techniques, in order to enhance performance, (iii) disability prevention methods and techniques which facilitate the development or safe application of performance skills, and (iv) health promotion strategies and practices which enhance performance abilities;

(11) Occupational therapy aide means a person who is not licensed by the board and who provides supportive services to occupational therapists and occupational therapy assistants;

(12) Occupational therapy assistant means a person holding an active license to assist in the practice of occupational therapy;

(13) Physical agent modalities means modalities that produce a biophysiological response through the use of water, temperature, sound, electricity, or mechanical devices; and

(14) Superficial thermal agent modalities means hot packs, cold packs, ice, fluidotherapy, paraffin, water, and other commercially available superficial heating and cooling technologies.

Source: Laws 1984, LB 761, § 31; Laws 1993, LB 121, § 451; Laws 1996, LB 1044, § 757; Laws 2001, LB 346, § 1; Laws 2002, LB 1021, § 95; Laws 2004, LB 1005, § 121. Operative date July 16, 2004.

71-6104. Occupational therapist; therapy assistant; licensure required; activities and services not prohibited. No person may represent himself or herself to be a licensed occupational therapist or occupational therapy assistant unless he or she is licensed in accordance with the Occupational Therapy Practice Act. Nothing in such act shall be construed to prevent:

(1) Any person licensed in this state pursuant to Chapter 71 from engaging in the profession or occupation for which he or she is licensed;

(2) The activities and services of any person employed as an occupational therapist or occupational therapy assistant by the armed forces, the United States Department of Veterans Affairs, or the United States Public Health Service if such person provides occupational therapy solely under the direction or control of the organization by which he or she is employed;

(3) The activities and services of any person pursuing an accredited course of study leading to a degree or certificate in occupational therapy if such activities and services constitute a part of a supervised course of study and if such a person is designated by a title which clearly indicates his or her status as a student or trainee;

(4) The activities and services of any person fulfilling the supervised fieldwork experience requirements of sections 71-6106 and 71-6107 if such activities and services constitute a part of the experience necessary to meet the requirements of such sections; or

(5) Qualified members of other professions or occupations, including, but not limited to, recreation specialists or therapists, special education teachers, independent living specialists, work adjustment trainers, caseworkers, and persons pursuing courses of study leading to a degree or certification in such fields, from doing work similar to occupational therapy which is consistent with their training if they do not represent themselves by any title or description to be occupational therapists.

Source: Laws 1984, LB 761, § 32; Laws 1991, LB 2, § 14; Laws 2004, LB 1005, § 122. Operative date July 16, 2004.

71-6105. Occupational therapist, therapy assistant; temporary permit. Any person who has applied to take the examination under section 71-6106 or 71-6107 and who has completed the education and experience requirements of the Occupational Therapy Practice Act may be granted a temporary permit to practice as an occupational therapist or an occupational therapy assistant. A temporary permit shall allow the person to practice only in association with a licensed occupational therapist and shall be valid until the date on which the results of the next licensure examination are available to the department. The temporary permit shall not be renewed if the applicant has failed the examination. The permit may be extended at the discretion of the board with the approval of the department. In no case may a temporary permit be extended beyond one year.

Source: Laws 1984, LB 761, §33; Laws 1988, LB 1100, §175. Operative date April 8, 1988.

71-6106. Occupational therapist; license; application; requirements; term. (1) An applicant applying for a license as an occupational therapist shall file a written application, which shall include the applicant's social security number, in the manner and on forms provided by the department, showing to the satisfaction of the department that he or she:

(a) Has successfully completed the academic requirements of an educational program in occupational therapy recognized by the department and accredited by a nationally recognized medical association or nationally recognized occupational therapy association;

(b) Has successfully completed a period of supervised fieldwork experience at an educational institution approved by the department and where the applicant's academic work was completed or which is part of a training program approved by such educational institution. A minimum of six months of supervised fieldwork experience shall be required for an occupational therapist; and

(c) Has passed an examination as provided in section 71-6108.

(2) Residency in this state shall not be a requirement of licensure. A corporation, partnership, limited liability company, or association shall not be licensed as an occupational therapist pursuant to the Occupational Therapy Practice Act.

Source: Laws 1984, LB 761, § 34; Laws 1989, LB 344, § 33; Laws 1993, LB 121, § 452; Laws 1997, LB 752, § 194; Laws 2003, LB 242, § 139. Operative date July 1, 2004.

71-6107. Occupational therapy assistant; license; application; requirements; term. (1) An applicant applying for a license as an occupational therapy assistant shall file a written application in the manner and on forms provided by the department, showing to the satisfaction of the department that he or she:

(a) Has successfully completed the academic requirements of an educational program in occupational therapy recognized by the department and accredited by a nationally recognized medical association or nationally recognized occupational therapy association;

(b) Has successfully completed a period of supervised fieldwork experience at an educational institution approved by the department and where the applicant's academic work was completed or which is part of a training program approved by such educational institution. A minimum of two months of supervised fieldwork experience shall be required for an occupational therapy assistant; and

(c) Has passed an examination as provided in section 71-6108.

(2) Residency in this state shall not be a requirement of licensure as an occupational therapy assistant. A corporation, partnership, limited liability company, or association shall not be licensed pursuant to the Occupational Therapy Practice Act.

Source: Laws 1984, LB 761, § 35; Laws 1989, LB 344, § 34; Laws 1993, LB 121, § 453; Laws 2003, LB 242, § 140. Operative date July 1, 2004.

71-6108. Applicant for licensure; examination; requirements. (1) Each applicant for licensure pursuant to the Occupational Therapy Practice Act shall be examined by a written examination which tests his or her knowledge of the basic and clinical sciences relating to occupational therapy and occupational therapy theory and practice including, but not limited to, professional skills and judgment in the utilization of occupational therapy techniques and methods and such other subjects as the board may deem useful to determine the applicant's fitness to practice. The board shall approve the examination and establish standards for acceptable performance. The board may choose a nationally standardized occupational therapist and occupational therapy assistant entry-level examination.

(2) Applicants for licensure shall be examined at a time and place and under such supervision as the board may

determine. The board shall notify all applicants by mail of the time and place of the examination.

(3) The department may adopt and promulgate rules and regulations to provide for the review of procedures for the development and administration of examinations and to protect the security of the content of examination questions and answers. The department shall not enter into an agreement to adopt an examination from a national testing service without first obtaining from that service detailed documentation of the process of examination development and maintenance.

Source: Laws 1984, LB 761, §36; Laws 1985, LB 250, §18; Laws 1987, LB 473, §61. Effective date March 27, 1987.

71-6109. Occupational therapist, therapy assistant; alternative licensure. (1) The department shall grant a license as an occupational therapist or occupational therapy assistant to any applicant who has actively practiced in the respective field for at least one of the five years immediately prior to July 10, 1984, and who is certified as a registered occupational therapist or who is a certified occupational therapy assistant in accordance with guidelines established by a national association.

(2) The department may waive the examination requirements in the Occupational Therapy Practice Act and grant a license to any applicant who presents proof of current licensure as an occupational therapist or occupational therapy assistant in another state, the District of Columbia, or territory of the United States which requires standards for licensure considered by the department to be substantially equivalent to the requirements for licensure of the Occupational Therapy Practice Act.

Source: Laws 1984, LB 761, §37; Laws 1985, LB 250, §19; Laws 1986, LB 926, §62. Effective date April 19, 1986.

71-6110. License; issuance. The department shall issue a license to any person who meets the requirements of the Occupational Therapy Practice Act.

Source: Laws 1984, LB 761, § 38; Laws 2003, LB 242, § 141. Operative date July 1, 2004.

71-6111. Department; enforcement and disciplinary powers. The department shall have the power to enforce the Occupational Therapy Practice Act and to deny, revoke, or suspend any license to practice as an occupational therapist or occupational therapy assistant issued by the department or applied for in accordance with section 71-6108 or to otherwise discipline a licensee on the grounds as specified in sections 71-147 and 71-148 and in the manner provided in the Uniform Licensing Law.

Source: Laws 1984, LB 761, §39; Laws 1988, LB 1100, §176; Laws 1991, LB 456, §39. Effective date September 6, 1991.

71-6112. Act; violations; penalty; investigators. Any person who violates any provision of the Occupational Therapy Practice Act shall be guilty of a Class III misdemeanor and such violation by a person licensed under such act shall be cause for disciplinary action prescribed in section 71-6111. The department may appoint investigators pursuant to section 71-124.01 to assist in enforcing the provisions of the Occupational Therapy Practice Act.

Source: Laws 1984, LB 761, §40. Effective date July 10, 1984.

71-6113. License; renewal; reinstatement; continuing competency. (1)(a) Licenses issued under the Occupational Therapy Practice Act shall be subject to biennial renewal and shall expire August 1 of each even-numbered year unless renewed in the manner provided by section 71-110 upon completion of the continuing competency activities as required under subsection (2) of this section and upon payment of the renewal fee established as provided in section 71-162.

(b) A licensee whose license is revoked for nonpayment of the biennial renewal fee as provided in section 71-110 may be reinstated upon the recommendation of the board and the payment of the required fees established as provided in section 71-162, except that no reinstatement of a license may be granted more than five years after its expiration.

(2)(a) Each Nebraska-licensed occupational therapist in active practice within the State of Nebraska shall, on or before August 1 of each even-numbered year, complete continuing competency activities as required by the board as a prerequisite to renewal of his or her license.

(b) Each Nebraska-licensed occupational therapy assistant in active practice within the State of Nebraska shall, on or before August 1 of each even-numbered year, complete continuing competency activities as required by the board as a prerequisite to renewal of his or her license.

(3) Every occupational therapist and occupational therapy assistant shall provide documentation of completing such continuing competency activities as required by the board.

The board shall biennially select, in a random manner, a representative sample of the license renewal applications for audit of compliance with continuing competency requirements.

(4) The department, on the recommendation of the board, may waive continuing competency requirements, in part or in total, for any two-year licensing period when a licensee submits documentation that circumstances beyond his or her control prevented completion of such requirements. Such circumstances shall include situations in which:

(a) The licensee holds a Nebraska license but does not reside or practice in Nebraska;

(b) The licensee has served in the regular armed forces of the United States during part of the twenty-four months immediately preceding the license renewal date;

(c) The licensee has submitted proof that he or she was suffering from a serious or disabling illness or physical disability which prevented completion of the required continuing competency activities during the twenty-four months preceding the license renewal date;

(d) The licensee has been initially licensed by the board within the twenty-four months immediately preceding the license renewal date; and

(e) The licensee has successfully completed two or more semester hours of formal credit instruction biennially offered by an accredited school or college which contributes to meeting the requirements of an advanced degree in a postgraduate program relating to occupational therapy.

Source: Laws 1984, LB 761, § 41; Laws 1994, LB 1223, § 77; Laws 2001, LB 346, § 2; Laws 2002, LB 1021, § 96; Laws 2003, LB 242, § 142; Laws 2004, LB 1005, § 129. Operative date July 16, 2004.

71-6114. Fees. The department shall establish and collect fees for credentialing activities under the Occupational Therapy Practice Act as provided in section 71-162.

Source: Laws 1984, LB 761, § 42; Laws 1986, LB 926, § 63; Laws 1988, LB 1100, § 177; Laws 1992, LB 1019, § 92; Laws 1994, LB 1223, § 78; Laws 2003, LB 242, § 143. Operative date July 1, 2004.

71-6115. Board of Occupational Therapy Practice; established; members; terms; expenses; officers. The Board of Occupational Therapy Practice is established. The board shall consist of at least four members appointed by the State Board of Health, all of whom shall be residents of this state. Any statewide association of occupational therapists may submit a list of names of qualified persons from which the State Board of Health may choose members of the Board of Occupational Therapy Practice. Three of the persons appointed shall have been engaged in rendering services to the public, teaching, or research in occupational therapy for at least five years immediately preceding their appointments. Two of the persons appointed shall be occupational therapists and one shall be either an occupational therapist or an occupational therapy assistant and all shall be holders of active licenses issued under the Occupational Therapy Practice Act during their terms. The fourth member shall be a member of the public with an interest in the rights of the consumers of health services. The members of the board shall serve five-year terms, except that the initial members of the board shall serve as follows: The member of the public shall serve one year and the remaining members shall serve terms of two, three, and four years as the State Board of Health shall designate. The term of each member shall commence on December 1 following the expiration of the preceding term. No person shall serve more than two full consecutive terms on the board. The State Board of Health shall fill any vacancy for an unexpired term in the same manner as the initial appointment. The members shall not receive compensation but shall be reimbursed for their actual expenses incurred while in the performance of their duties in the same manner as state employees pursuant to sections 81-1174 to 81-1177. The board shall annually elect a chairperson and such other officers as it deems necessary and shall meet at least once per year or more as the department and board shall determine. Members of the board may be removed from office on the grounds and in the manner provided by section 71-118.

Source: Laws 1984, LB 761, § 43; Laws 1987, LB 473, § 62; Laws 1988, LB 1100, § 178; Laws 2001, LB 346, § 3; Laws 2002, LB 1021, § 97; Laws 2004, LB 1005, § 131. Operative date July 16, 2004.

71-6116. Repealed. Laws 2003, LB 242, § 154.

71-6117. Occupational therapy aide; supervision requirements. An occupational therapy aide shall function under the guidance and responsibility of an occupational therapist and may be supervised by an occupational therapist or an occupational therapy assistant for specifically selected routine tasks for which the aide has been trained and has demonstrated competence. The aide shall comply with supervision requirements developed by the board. The board shall develop supervision requirements for aides which are consistent with prevailing professional standards.

Source: Laws 2004, LB 1005, § 123. Operative date July 16, 2004.

71-6118. Occupational therapist; services authorized. An occupational therapist may perform the following services:

(1) Evaluate, develop, improve, sustain, or restore skills in activities of daily living, work activities, or productive activities, including instrumental activities of daily living, and play and leisure activities;

(2) Evaluate, develop, remediate, or restore sensorimotor, cognitive, or psychosocial components of performance;

(3) Design, fabricate, apply, or train in the use of assistive technology or orthotic devices and train in the use of prosthetic devices;

(4) Adapt environments and processes, including the application of ergonomic principles, to enhance performance and safety in daily life roles;

(5) If certified pursuant to section 71-6122, apply physical agent modalities as an adjunct to or in preparation for engagement in occupations when applied by a practitioner who has documented evidence of possessing the theoretical background and technical skills for safe and competent use;

(6) Evaluate and provide intervention in collaboration with the client, family, caregiver, or others;

(7) Educate the client, family, caregiver, or others in carrying out appropriate nonskilled interventions; and

(8) Consult with groups, programs, organizations, or communities to provide population-based services.

Source: Laws 2004, LB 1005, § 124. Operative date July 16, 2004.

71-6119. Occupational therapy assistant; supervision required. An occupational therapy assistant may deliver occupational therapy services enumerated in section 71-6118 in collaboration with and under the supervision of an occupational therapist.

Source: Laws 2004, LB 1005, § 125. Operative date July 16, 2004.

71-6120. Referrals. (1) An occupational therapist may accept a referral from a licensed health care professional for the purpose of evaluation and rehabilitative treatment which may include, but not be limited to, consultation, rehabilitation, screening, prevention, and patient education services.

(2) Referrals may be for an individual case or may be for an established treatment program that includes occupational therapy services. If programmatic, the individual shall meet the criteria for admission to the program and protocol for the treatment program shall be established by the treatment team members.

(3) Referrals shall be in writing, except that oral referrals may be accepted if they are followed by a written and signed request of the person making the referral within thirty days after the day on which the patient consults with the occupational therapist.

Source: Laws 2004, LB 1005, § 126. Operative date July 16, 2004.

71-6121. Direct access to services. The public may have direct access to occupational therapy services.

Source: Laws 2004, LB 1005, § 127. Operative date July 16, 2004.

71-6122. Physical agent modalities; certification required. (1) In order to apply physical agent modalities, an occupational therapist shall be certified pursuant to this section. The department shall issue a certificate to an occupational therapist to administer a physical agent modality if the occupational therapist:

(a) Has successfully completed a training course approved by the board and passed an examination approved by the board on the physical agent modality;

(b) Is certified as a hand therapist by the Hand Therapy Certification Commission or other equivalent entity recognized by the board;

(c) Has a minimum of five years of experience in the use of the physical agent modality and has passed an examination approved by the board on the physical agent modality; or

(d) Has completed education during a basic educational program which included demonstration of competencies for application of the physical agent modality.

(2) The department shall issue a certificate to authorize an occupational therapy assistant to set up and implement treatment using superficial thermal agent modalities if the occupational therapy assistant has successfully completed a training course approved by the board and passed an examination approved by the board. Such set up and implementation shall only be done under the onsite supervision of an occupational therapist certified to administer superficial thermal agent modalities.

(3) An occupational therapist shall not delegate evaluation, reevaluation, treatment planning, and treatment goals for physical agent modalities to an occupational therapy assistant.

Source: Laws 2004, LB 1005, § 128. Operative date July 16, 2004.

71-6123. Rules and regulations. (1) The department, with the approval of the board, shall adopt and promulgate rules and regulations necessary to administer the Occupational Therapy Practice Act to protect the public health, safety, and welfare and to insure, to the greatest extent possible, the efficient, adequate, and safe practice of occupational therapy.

(2) The rules and regulations shall include (a) definitions of unprofessional conduct, (b) definitions of conflicts of interest for members of the board and procedures in the case such a conflict arises, (c) role delineation for occupational therapy assistants, and (d) continuing competency requirements. Continuing education is sufficient to meet continuing competency requirements. Such requirements may also include, but not be limited to, one or more of the continuing competency activities listed in section 71-161.09 which a licensed person may select as an alternative to continuing education.

(3) Except as provided in subsection (4) of this section, the department, with the approval of the board, shall adopt and promulgate rules and regulations to implement Laws 2004, LB 1005, and shall provide for the changes regarding scope of practice to be implemented for licensees as soon as the rules and regulations become effective.

(4) The board may adopt and promulgate rules and regulations governing the training courses for an occupational therapist to be certified to administer a physical agent modality. The board may adopt and promulgate rules and regulations governing the training course for an occupational therapy assistant to be certified to set up and implement superficial thermal agent modalities. In adopting such rules and regulations, the board shall give consideration to the levels of training and experience which are required, in the opinion of the board, to protect the public health, safety, and welfare and to insure, to the greatest extent possible, the efficient, adequate, and safe practice of occupational therapy. Such rules and regulations shall include the approval of examinations and the passing score for such examinations for certification. Any person who was practicing as (a) an occupational therapist and administering physical agent modalities or (b) an occupational therapy assistant

setting up and implementing superficial thermal agent modalities prior to July 16, 2004, may continue to administer such modalities until July 1, 2006. After July 1, 2006, any person who wishes to administer such modalities shall obtain certification as provided by section 71-6122.

(5) Rules and regulations adopted and promulgated pursuant to the Occupational Therapy Practice Act prior to July 16, 2004, shall continue in effect until revised, amended, repealed, or nullified pursuant to law.

Source: Laws 2004, LB 1005, §130; Laws 2005, LB 244, §1. Effective date March 23, 2005.